NO COMPROMISE OF HUMAN RIGHTS.

No admission in the Constitution of Inequality of Rights, or

DISFRANCHISEMENT ON ACCOUNT OF COLOR.

SPEECH

OF

HON. CHARLES SUMNER,

OF MASSACHUSETTS,

ON THE

PROPOSED AMENDMENT OF THE CONSTITUTION FIXING THE BASIS OF REPRESENTATION;

DELIVERED

IN THE SENATE OF THE UNITED STATES, MARCH 7, 1866.

WASHINGTON:
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APPORTIONMENT OF REPRESENTATION.

The Senate having under consideration the following joint resolution (H. R. No. 51) proposing to amend the Constitution of the United States:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of the said Legislatures, shall be valid as part of said Constitution, namely:

ARTICLE —. Representatives shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed: *Provided*, That whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons therein of such race or color shall be excluded from the basis of representation.

Mr. SUMNER said:

Mr. PRESIDENT: I hesitate to intrude again into this debate, which now, after the interjection of another debate on another question, is again renewed. I do it with unfeigned reluctance, and I hope not to trespass too much on your patience.

The question before us, even in its simplest form, is of incalculable importance; but it has an added interest, inasmuch as it opens the whole vast subject of reconstruction. Into this field I shall not be tempted at this time, except to express a short opinion on the general principles we should seek to establish. Treason must be made odious, and to this end power must be secured to loyal fellow-citizens. In doing this, two indispensable conditions cannot be forgotten: first, all who have been untrue to the Republic must for a certain time, constituting the *transition period*, be excluded from the partnership of government; and secondly, all who have been true to the Republic must be admitted into the partnership of government, according to the sovereign rule of the Constitution, which knows no distinction of color. Following these two simple commandments, there will be safety and peace, together with power and renown. Neglecting these two simple commandments, there must be peril and distraction, together with imbecility and dishonor. In the one way reconstruction will be easy; in the other way it will in any just sense be impossible. It may seem for the moment to succeed; but it must fail in the end. This is all I have to say at present on reconstruction, and I turn at once to the precise question before us.

Pardon me, sir, if I remind you here on the threshold that there are two modes of debate. One is to attack the previous speaker with personality of criticism or of manner. The other is to speak plainly on the question, and to deal directly according to your convictions with the principles involved. Sometimes these two modes are allowed to intermingle. If ever there was an occasion when the first should be carefully avoided, when the question alone should be handled, and not the previous speaker, when the attention should be directed exclusively to the principles involved, and not to any subordinate point of mere form, it is now, when we are asked to insert a new provision in the Constitution, fixing the basis of political power at the expense of fellow-citizens counted by millions. In this spirit I shall try to say what I have to say. To my mind, the occasion is too solemn for personal controversy, and I shall not be drawn into it.

CHARACTER OF THIS COMPROMISE.

The proposition now before you is the most important ever brought into Congress, unless, perhaps, we may except the amendment abolishing slavery, and to my mind it is the most utterly reprehensible and unpardonable. The same sentiment which led us to hail the abolition of slavery with gratitude as the triumph

of justice, should make us reject with indignation a device to crystallize into organic law the disfranchisement of a race. It is with infinite regret that I differ from valued friends about me, but I cannot do otherwise. I bespeak in advance their candor, and most cheerfully concede to all from whom I differ the same indulgence which I claim for myself. But with me there is no alternative. Seeing this proposition as I do I must speak frankly, as on other occasions, in exposing the Crime against Kansas or the infamy of that enactment which turned the whole North into a hunting-ground, where man was the game. The attempt now is on a larger scale and is more essentially bad than the Crime against Kansas or the Fugitive Slave Bill. Such a measure, so obnoxious to every argument of reason, justice, and feeling, so perilous to the national peace and so injurious to the good name of the Republic, must be encountered as we encounter a public enemy. There is no language which can adequately depict its character. Thinking of it, I am reminded of those words of Chatham, where he held up to undying judgment a measure of the British Ministry, which I think had already received the sanction of the House of Commons, as the present attempt has already received the sanction of the House of Representatives. Chatham did not hesitate, nor did he tame his words, but exclaimed:

"I am astonished, shocked, to hear such principles confessed; to hear them avowed in this House or in this country, principles equally unconstitutional, inhuman, and unchristian. I call upon you to stamp upon them an indelible stigma of the public abhorrence."

Then, rising to still higher flight, he exclaimed:

"My lords, I am old and weak and at present unable to say more; but my feelings and indignation were too strong to have said less. I could not have slept this night in my bed, nor reposed my head on my pillow, without giving this vent to my eternal abhorrence of such preposterous and enormous principles."

But what was the measure which thus aroused the veteran orator compared with that which is now before us? It was only a transient act of wrong, small in its proportions, which he denounced. I am to denounce an act of wrong permanent in its influence, colossal in its proportions, operating in an extensive region, affecting millions of citizens, positively endangering the peace of the country, and covering its name with dishonor. Such is the character of the present attempt. I exhibit it as I see it. Others may not see it so. Of course, its supporters cannot see it so. The British Ministry did not see the measure which Chatham denounced as he saw it and as history now sees it. Of course Senators would not support the present proposition if they thought it disgraceful; nor would the British Ministry have supported that earlier proposition had they thought it disgraceful. Unhappily, they did not think it so; but I trust you will be warned by their example.

With the eloquence of Chatham, another person from his place in the House of Lords held up to reprobation that apprentice system, which under the sanction of both Houses of Parliament, followed emancipation in the British West Indies. I refer to Brougham. He did not hesitate to exclaim: "Prodigious, portentous injustice!" And then continuing, he exclaimed again: "The gross, the foul, the outrageous, the incredible injustice of which we are daily and hourly guilty toward the whole of the ill-fated African race!" But how small was the injustice which aroused his reprobation compared with that which you are now asked to perpetuate in constitutional law. The wrong which he arraigned was against eight hundred thousand persons in distant islands, to whom the people of Great Britain were bound by no ties of gratitude, and who were to them only fellow-men. The wrong which I now arraign is against four million persons, constituting a considerable portion of the "people" of the United States to whom we are bound by ties of gratitude, and who are to us fellow-citizens.

From the moment I heard this proposition first read at the desk I have not been able to think of it without pain. The reflection that it might find a place in the Constitution, or even that it might be sanctioned by Congress, is intolerable. And this becomes more so when I call to mind the circumstances by which we are surrounded and the exigency of the hour.

Lord Bacon tells us that the highest function which men can be called to perform on earth is that of founders of States, or, as he expresses it, *conditores imperii*. Such is the duty now before us. We are to help in this great work by a fundamental provision which shall fix the basis of our political system for an indefinite future. There are none among the great lawgivers of history who have had a sublimer task.

But this duty is enhanced when we consider that it is the consequence and sequel of an unparalleled war. At a moment of peace such a duty would be commanding; but it is now reënforced by exceptional considerations arising from the exceptional condition of affairs. For four years Rebellion, in the largest proportions known to authentic history, raged among us, threatening to rend this Republic in twain. Millions of treasure were sacrificed. Lives more precious than any treasure were heaped in hecatombs. Families were filled with mourning. In the terrible struggle, while the country was bleeding at every pore and the scales of battle hung doubtful, assistance came from an unexpected quarter. Intermixed with the false men who warred on the Republic were more than three million slaves, shut out from

rights of all kinds, and compelled to do the bidding of masters. These slaves became our benefactors. They were kind to our captive soldiers, sheltering them, feeding them, supplying their wants, and guiding them to safety. Thus in the very heart of the Rebellion there was a filial throb for the Republic. At last arms were put into the hands of these benefactors, and two hundred thousand brave allies, representatives of an unmustered host, leaped forward in defense of the national cause. The Republic was saved. The Rebellion was at an end. Meanwhile the good President who at that time guided our affairs put forth his immortal Proclamation, declaring that these slaves "are and henceforward shall be free," and not stopping with this declaration, he proceeded to announce, that the Executive Government of the United States, including the military and naval authorities thereof, "will recognize and *maintain* the freedom of such persons." Thus was the Republic solemnly pledged to these benefactors: first, by the ties of gratitude that should be enduring, and secondly, by an open promise in the face of the civilized world. And this pledge was taken up and adopted by the people of the United States, when, by constitutional amendment, they expressly empowered Congress to maintain this freedom by appropriate legislation.

And now, sir, called as we are to readjust the foundations of political power, which are naturally changed by the disappearance of slavery; and called also to perform sacred promises to benefactors, in harmony with sacred promises of our fathers, while at the same time we save the name of the Republic from dishonor and see that the national peace is not imperiled, Congress is about to liquidate all these inviolable obligations by a new compromise of Human Rights, and, so far as it can, to place this compromise in the text of the Constitution; thus establishing a false foundation of political power, violating the national faith, dishonoring the name of Republic, and imperiling the national peace. Others have dwelt on the inadequacy of this proposition, even for its avowed purposes. This is plain. Conceived in a desire to do indirectly what ought to be done directly, and thus "by indirections find direction out," it must naturally share the conditions of such a device.

Looking at this proposition in its most general aspect, it reminds me, if you will pardon the illustration, of that leg of mutton, served for dinner on the road from London to Oxford, which Dr. Johnson, with characteristic energy, described "as bad as bad could be, ill-fed, ill-killed, ill-kept, and ill-dressed." So this proposition—I adopt the saying of an eminent friend, who insists that it cannot be called an "amendment," but rather a "detriment" to the Constitution—is as bad as bad can be; and even for its avowed purpose it is uncertain, loose, cracked, and rickety. *Regarding it as a proposition from Congress to meet the unparalleled exigencies of the present hour*, it is no better than the "muscipular abortion" sent into the world by the "parturient mountain." But it is only when we look at the chance of good from it that this proposition is "muscipular." Looking at it in every other aspect it is gigantic, inasmuch as it makes the Constitution a wellspring of insupportable thralldom, and once more lifts the sluices of blood destined to run until it comes to the horse's bridle. Adopt it, and you will put millions of fellow-citizens under the ban of excommunication; you will hand them over to a new anathema maranatha; you will declare that they have no political rights "which white men are bound to respect," thus repeating in a new form that abomination which has blackened the name of Taney. Adopt it, and you will stimulate anew the war of race upon race. Slavery itself was a war of race upon race, and this is only a new form of this terrible war. The proposition is as hardy as it is gigantic; for it takes no account of the moral sense of mankind, which is the same as if in rearing a monument we took no account of the law of gravitation. It is the paragon and master-piece of ingratitude, showing more than any other act of history what is so often charged and we so fondly deny, that republics are ungrateful. The freedmen ask for bread, and you send them a stone. With piteous voice they ask for protection. You thrust them back unprotected into the cruel den of their former masters. Such an attempt, thus bad as bad can be; thus abortive for all good; thus perilous; thus pregnant with a war of race upon race; thus shocking to the moral sense, and thus treacherous to those whom we are bound to protect, cannot be otherwise than shameful. Adopt it, and you will cover the country with dishonor. Adopt it, and you will fix a stigma upon the very name of Republic. As to the imagination, there are mountains of light, so are there mountains of darkness; and this is one of them. It is the very Koh-i-noor of blackness.

OBJECTIONS TO THIS COMPROMISE.

I shall not content myself by describing this proposition. This is not enough, where such an attempt is made. You have seen it in its general character only. You shall see it now in its guilty parts, each one of which is sufficient to arouse the conscience against it.

1. Of course you cannot fail to be struck by its language. Here words become things. In express terms there is *an admission of the idea of Inequality of Rights founded on race or color*. That this unrepublican idea should be allowed to find a place in the text of the Constitution will excite especial wonder when it is considered how conscientiously our fathers excluded from

that text the kindred idea of property in man. The saying of Mr. Madison cannot be too often repeated:

"He thought it *wrong* to admit in the Constitution the idea of property in man."

But is it less wrong to admit in the Constitution the idea of Inequality of Rights founded on race or color? Surely the authors of this proposition have acted very inconsiderately and with little regard to the spirit of the fathers. Imagine it introduced into the Convention which framed the Constitution. It would have been scorned as a defilement not to be tolerated. It would have been scouted from that text which, with pious care, was to be guarded against degradation. And now mark the change. After the lapse of generations, when our obligations have increased with increasing light—at an epoch of history when mankind are more than ever before sensitive to the claims of human rights—and when among ourselves there is more than ever before a desire and a duty to fulfill all the promises of the Declaration of Independence, we are invited to make the Constitution slap the Declaration of Independence in the face; to make it insult the conscience of mankind, and to make it disregard all the obligations pressing upon us. But this is a mild way of stating the character of this attempt as it appears in the words. Its essential uncleanness is not disclosed; and this you must understand. Adopt this proposition, and you will be little better than the foul Harpies who defiled the feast that was spread. The Constitution is the feast spread for our country, and you are now hurrying to drop into its text a political obscenity, and to spread on its page a disgusting ordure,

"Defiling all you find,
And parting leave a loathsome stench behind."

If I use plain language it is because the occasion requires it. Only in this way can this enormity be adequately exposed. Only in this way can you be made to see it in its true character. Only in this way can you be moved to shrink from it with proper repugnance. It is in this spirit that the religious press of the country is beginning to speak. The Boston Recorder, which is the most venerable of all the religious papers of New England, and perhaps of the whole country, which for more than half a century has been a weekly teacher at uncounted firesides, thus solemnly appeals to the conscience of patriots and of statesmen:

"The proposed amendment to the Constitution of the United States, which passed the House of Representatives last week by a vote of 120 to 46, will, if it should become the fundamental law of the land, *inflict upon our free institutions greater infamy than anything contained in our written Constitution.* There are things there which were sufficiently disgraceful in their intent and purpose. That the slave trade should not be prohibited before 1808; that three fifths of the slaves should be represented in Congress by the votes of their owners; that fugitive slaves should be returned to their owners: these were scandalous provisions to which our noble fathers submitted only because without them we could have no common national existence. But they couched these offensive propositions in terms that, on the cessation of slavery, would have no objectionable meaning. This event they anticipated much earlier than it has actually occurred. And now that it is a fact, no one wishes the clauses of the Constitution to which we have alluded to be stricken out.

"But now it is proposed to ingraft upon this revered instrument a principle that a State may decree that all men are not born equal, and may disfranchise a majority of her citizens and their sons and their sons' sons forever! Good jurists have declared that the Constitution as it now stands would forbid any such State action, and that all constitutions and laws disfranchising citizens because of their parentage, color, race, or descent are null and void. We are not aware of any attempt to refute this view with a shadow of success.

"And now it cannot be that we shall give up our vantage ground *and stain the triumph* bought with so much precious blood with *a concession which might be turned to so base a use!*

"Let every patriot, to whom the good name of America is dear, bestir himself. Let every Christian who believes that God is no respecter of persons; let every father who would not leave to his children a legacy of national discord and a birthright in a nation yet to bleed in Helot conspiracies; let every statesman who believes that even justice is the only sure foundation of national tranquillity arouse himself."

I have heard somewhere a strange apology for these words of defilement. It is said that they are "punitive" in character, and that the idea of Inequality of Rights is to be admitted into the Constitution for punishment and not for sanction. As well say that the term "three fifths of all other persons" in the Constitution was "punitive" in character. It was no such thing. It was a Compromise; and such is the precise character of the present proposition, which, by its very words, is a plain license to a disgusting tyranny in consideration that the tyrants pay in political power. The primary element in the case, which stands out in "darkness visible," is the license; the secondary element is the pay. Here is nothing less than a mighty house that shall be nameless, which it is proposed to license constitutionally for a consideration. Even if political power is curtailed, it is only as a consideration for the license. It is a new sale of Indulgences on a larger scale than that of Tetzel. The latter came from Rome into Germany dispensing indulgences for adultery, robbery, theft; but the outrage aroused Martin Luther, and the Reformation began. As well say that since pay was

required, therefore the indulgences of Tetzel were "punitive" as that the present proposition is "punitive."

Thus far I have spoken of this proposition only as it appears in its words, without analyzing it in detail. On its face it is shameful. In its elementary parts and consequences, it is, if possible, more shameful still.

2. One of its elementary parts and consequences is that *it sanctions the acknowledged tyranny of taxation without representation.* A whole race, constituting a considerable part of the people of the United States, and embraced under the words of the preamble to the Constitution, "We the people," are left without representation in the Government, but nevertheless held within the grasp of taxation of all kinds, direct and indirect, tariff and excise, State and national. Sir, this is tyranny or else our fathers were wrong when they protested against a kindred injustice. This principle is fundamental. You cannot violate it without again dishonoring the fathers.

To the application of this principle there have been two replies: first, that in its nature it was a claim of representation for communities only, and not for individuals; and secondly, that in its nature it embraces women as well as men. And from these two considerations it has been argued that it cannot be invoked for the protection of our four millions "guilty of a skin not colored like our own." Even if it had been originally a claim for communities only, and not for individuals, it is difficult to see how it can be rejected as a rule in determining the rights of a mass of fellow-citizens counted by millions. Our fathers when they cried out that taxation without representation is tyranny were not more than two millions and a half. Our fellow-citizens who now echo the same cry throughout the whole country are more than four millions, possessing the weight of numbers if not of organization. But it is a mistake to suppose that the original claim was for communities only and not for individuals. This is a question of history, to be considered with the gravity of history, and as such I ask your attention to it.

Already in opening this debate I carried you to that Provincial Court in Massachusetts where in assailing writs of assistance, James Otis first launched the thunderbolt, "Taxation without representation is Tyranny." You will remember how careful he was to insist that without representation there could be no taxation of any kind, direct or indirect, on land or on trade, and that the representation must be substantial, real and not merely imaginary, or, as it was expressed at that time, "virtual." It was in developing this principle that he announced the Equal Rights of all without distinction of color. On this ground he stood when he uttered those memorable words which the whole country adopted at once with patriotic frenzy, and which I insist you shall not deny in our organic law.

Would you know more precisely the meaning of Otis? Let him be his own interpreter. Again and again he asserts the Equality of men. This was his fundamental principle, which on an important occasion he thus expressed: "The first and simple principle is Equality and the Power of the Whole." (Otis, *Rights of Colonies*, p. 14.) Nor did he allow this to be limited in its application by any distinction of color. John Adams, who was present when the orator first raised his great cry, says, "Nor were the poor negroes forgotten. Not a Quaker in Philadelphia, or Mr. Jefferson, of Virginia, ever asserted the rights of negroes in stronger terms." (John Adams's *Works*, vol. 10, p. 315.) Shortly afterward Otis, in another form, assailed directly the distinction of color, saying, "Will short curled hair, like wool, instead of Christian hair, as it is called by those whose heart is as hard as the nether mill-stone, help the argument?" (Otis, *Rights of Colonies*, p. 29.) Such, then, were his premises, the Equal Rights of all without distinction of color. From these his conclusion was easy. Here it is in his own words:

"The very act of taxing exercised over those who are not represented appears to me to be depriving them of one of their most essential rights as freemen, and *if continued, seems to be, in effect, an entire disfranchisement of every civil right.* For what one civil right is worth a rush after a man's property is subject to be taken from him at pleasure without his consent? If a man is not his *own assessor*, in person or by deputy his liberty is gone, or he is entirely at the mercy of others."—*Otis, Rights of the Colonies*, p. 58.

Stronger words for universal suffrage could not be employed. His argument is that if men are taxed without being represented they are deprived of essential rights; and the continuance of this deprivation despoils them of every civil right, thus making the latter depend upon the right of suffrage, which by a neologism of our day is known as a political right instead of a civil right. Then, to give point to this argument, the patriot insists that in determining taxation, "every man must be his own *assessor*, in person or by deputy," without which his liberty is entirely at the mercy of others. Here, again, in a different form, is the original thunderbolt, "Taxation without representation is Tyranny;" and the claim is made not merely for communities, but for "every man."

Such a principle naturally encountered opposition at that time, even as it does now in this Chamber; but Otis was ready at all points. To the argument that Manchester, Birmingham, and Sheffield, like America, returned no members to Parliament, he flashed forth in reply:

"If they are not represented they ought to be. *Every man of a sound mind should have his vote.*"

And then, again, taking up the reply, he exclaimed:

"Lord Coke declares that it is against Magna Charta, and against the franchises of the land, for freemen to be taxed but by their own consent."—*Bancroft's History of United States*, vol. 5, p. 290.

Thus does he interpret again the flaming words, "Taxation without representation is Tyranny."

But while thus positive in his demand, there is reason to believe that Otis so far yielded to a prevailing sentiment, and especially to the opinions of Harrington, whose *Oceana* was much read at that time, as sometimes to recognize property in determining the basis of political power. On one occasion he said that Government could not be "rightfully founded on property alone," thus seeming to intimate that property might enter into the foundation, although, as he derisively remarks, "the possessor of it may not have much more wit than a mole or musquash." (Otis, *Rights of Colonies*, p. 10.) But it was doubtless obvious to his clear intelligence that a claim of power founded on property was very different from a claim of power founded on color. Property may be acquired; but color, from its nature, is an insurmountable condition. The original constitution of Massachusetts recognizes property as an element of political power; but it rejects all discrimination founded on color. If, therefore, under the maxim of Otis, there may be a discrimination founded on property, most clearly, according to reason and early practice, there can be no discrimination founded on color, so that at the present hour his maxim is of vital force as a claim, not merely for the community, but for the individual. Let the country now, as aforetime, take it up and repeat it until it becomes the watchword of patriotism.

But Otis was not the only interpreter of this maxim of Liberty. The Legislature of Massachusetts on repeated occasions made the same claim. On one occasion, in solemn resolutions drawn by Samuel Adams and adopted unanimously, it spoke as follows:

"That by the law of nature no man has a right to impose laws more than to levy taxes upon another; that the freeman pays no tax, as the freeman submits to no law but such as emanates from the body in which he is represented."—*John Adams's Works*, vol. 1, p. 78.

Surely this claim is not merely for the community. It is for the individual freeman also.

Virginia was not behind Massachusetts. In her Bill of Rights, drawn by that determined patriot, George Mason, and adopted June 12, 1776, anterior to the Declaration of Independence, is the following emphatic claim:

"All men having sufficient evidence of permanent common interest with and attachment to the community *have the right of suffrage and cannot be taxed or deprived of their property for public uses without their own consent* or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good."

Here again the claim is not merely for the community. It is for "all men," and it is set forth thus positively in a Bill of Rights.

Let Benjamin Franklin interpret these words. Here is a statement found among his papers, under date of 1769, while the colonists were echoing the cry, "Taxation without representation is tyranny:"

"That *every man* of the commonalty, except infants, insane persons, and criminals, is of common right, and by the laws of God, a freeman and entitled to the free enjoyment of liberty. *That liberty or freedom consists in having an actual share in the appointment of those who frame the laws*, and who are to be the guardians of every man; life, property, and peace; for the *all* of one man is as dear to him as the *all* of another; and the poor man has an *equal* right, but *more* need to have representatives in the Legislature than the rich one.

"That they who have no voice nor vote in the electing of representatives *do not enjoy liberty; but are absolutely enslaved to those who have votes and to their representatives;* for to be enslaved is to have governors whom *other men have set over us*, and be subject to laws *made by the representatives of others*, without having had representatives of our own to give consent in *our* behalf."—*Franklin's Works*, vol. 2, p. 372.

Here is no claim for communities merely, but expressly for "every man," including especially "the poor man," and without distinction of color.

This American testimony is fitly crowned by the Declaration of Independence, which, beginning with the proclamation that "all men are created equal," proceeds to assert that Governments "derive their just powers from the consent of the governed." Here again is no claim for communities, but for "all men;" and this is the most authoritative interpretation of the original claim, thundered forth by Otis, and echoed throughout the land. It is idle to show that, in certain instances, the fathers failed to apply the sublime principles which they declared. Their failure can be no apology for us, on whom the duty is now cast.

But there is still another interpreter to be invoked. The maxim of Otis was not original with him. It may be found in the writings of John Locke, so remarkable for masculine sense and an exalted love of liberty. On a former occasion I adduced his authority, which is plain and positive. Pardon me if I call your attention to it once more. After asserting that Government cannot take the property of any one without his own consent or that of the majority of the people, the philosopher thus expresses himself:

"For, if any one shall claim a power to lay and

levy taxes on the people by his own authority *and without such consent of the people*, he thereby invades the fundamental law of property and subverts the end of government; for what property have I in that which another may by right take, when he pleases, to himself?"—*Locke's Civil Government*, book ii, ch. 7; ch. 14.

Mr. Hallam, commenting on this text, does not hesitate to say, that, "in substance it charges with usurpation all the established Governments of Europe;" "that neither the Revolution of 1688 nor the administration of William III could have borne the test by which Locke tried the legitimacy of government." (Hallam, *History of Literature*, vol. 3, pp. 545, 448.)

A later English writer, Mr. Tremenheere, commenting also on this text, sets forth its two propositions as follows: "first, that a political society can only be bound by the act of the majority; secondly, that taxation without representation is tyranny." (Tremenheere, *Political Experience*, p. 130.) Such are the two propositions which this English writer finds in Locke and which he cites for condemnation. Thus, if we repair with Otis to the very source from which he drew, we shall find that there was no claim for communities merely but for the individual man without distinction of color.

Mr. Bright, our English friend, in one of his admirable speeches, only recently has furnished an additional illustration. He has brought to light a resolution from no less an authority than Lord SOMERS on an important occasion, kindred to the present, when it was proposed to disfranchise all who were not of the Established Church, as it is now proposed to disfranchise all who are not of a certain color. Speaking for the House of Lords, in conference with the Commons, this great constitutional lawyer thus insisted:

"The Lords allowing that no man can claim a place by birthright, yet conceive that *giving a vote for representative in Parliament is the essential privilege whereby every Englishman preserves his property*, and that whatsoever deprives him of such vote deprives him of his birthright."

Here again is the very cry of Otis; and you cannot fail to observe that the claim is not for communities merely, but for "every Englishman" without distinction of color.

Surely here is enough on this head. But it is said that this claim is as applicable to women as to men, especially where women are taxpayers. To this I reply, that Locke, Somers, Otis, and Franklin, in making this claim, did not give to it any such extent, and the question which I now submit is simply as to their meaning in the words "Taxation without representation is Tyranny." Clearly their claim was for *men*, believing, as they did, that *women* were represented through men; and it is hardly candid to embarrass the present debate, involving the rights of an oppressed race by another question which is entirely independent. In saying that the claim was for men, I content myself with the authority of Theophilus Parsons, afterward the eminent Chief Justice of Massachusetts, who, in a masterly state paper, known as the "Essex Result," which was the prelude to the constitution of Massachusetts, thus discloses the opinion of the Fathers on this precise point:

"Every freeman, who hath sufficient discretion, should have a voice in the election of his legislators. All the members of the State are qualified to make the election, unless they have not sufficient discretion, or are so situated as to have no wills of their own; persons not twenty-one years old are deemed of the former class from their want of years and experience. Women, what age soever they are of, are also considered as not having a sufficient acquired discretion; not from a deficiency in their mental powers, but from the natural tenderness and delicacy of their minds, their retired mode of life, and various domestic duties. These concurring prevent that intercourse with the world which is necessary to qualify them for electors. Slaves are of the latter class and have no wills."—*Parsons' Life of Chief Justice Parsons*, p. 376.

The reasons assigned for the exclusion of women may be very unsatisfactory; but they show at least that the Fathers, when insisting that taxation and representation must go together, did not regard women, any more than minors, within the sphere of this commanding principle. And here I leave this head of the argument, concluding as I began, that you cannot adopt the proposition now before the Senate without setting at defiance that great maxim of Constitutional Liberty, which was the rallying cry of our Fathers. God forbid that there should be any such outrage.

3. Proceeding with the dissection of this proposition, I now exhibit it as a new form of *concession to State Rights*. Such it is plainly on its face; such it is in reality; and the more you examine it the more complete the concession appears. Already it has been announced as such by those who seek to commend it in quarters of doubtful loyalty. Here, for instance, is a speech of Hon. John E. King, claimant of a seat in Congress from Louisiana, only a few days ago, addressed to the Legislature of his State, where, after calling attention to the present so-called amendment, he thus exults in what seemed to him the prospect of its adoption:

"The present Congress is proceeding to amend without the eleven States that are unrepresented in that body. *However, there is some good in all this evil.* If this amendment should pass, and the Speaker said that himself and colleagues had no doubt that it would, it will settle forever the right of the States to legislate, each for itself, as to who shall be the voters therein."—*New Orleans Delta*, February 13, 1866.

Thus, while deprecating amendments to the Constitution in the absence of the eleven rebel

States, the partisan of State Rights is reconciled to the proposition now pending, inasmuch as it is a triumph of this sectional pretension. Alas! that now, at the close of a rebellion in the name of State Rights, we should be considering calmly how to give this pernicious heresy new support in the Constitution itself. From the beginning State Rights have been used for oppression and wrong. The terrible war from which we are emerging makes it an especial duty now to restrain them, not to extend them.

Of course I suggest no interference with the just rights of the States. These belong to the harmonies of the Union. But, in the name of Justice, I insist that nothing further shall be done to invest the States with peculiar local power. If not taught by the lessons of the late war, then be taught by the principles avowed at the very beginning of the Government.

The object of the Constitution was to ordain, under the authority of the people, a national Government possessing unity and power. The Confederation had been merely an agreement "between the States," styled "a league of firm friendship." Found to be feeble and inoperative, through the pretension of State Rights, it gave way to the Constitution, which, instead of a "league," created a "Union" in the name of the people of the United States. Beginning with these inspiring and enacting words, "We, the people," it was popular and national. Here was no concession to State Rights, but a recognition of the power of the people, from whom the Constitution proceeded. The States are acknowledged; but they are all treated as component parts of the Union in which they are absorbed, under the Constitution which is the supreme law. There is but one sovereignty, and that is the sovereignty of the United States.

On this very account the adoption of the Constitution was opposed by Patrick Henry and George Mason. The first exclaimed, "that this is a consolidated Government is demonstrably clear; the question turns on that poor little thing 'We the people,' instead of the States." The second exclaimed, "Whether the Constitution is good or bad, it is a national Government, and no longer a Confederation." But against this powerful opposition the Constitution was adopted in the name of the people of the United States. Throughout the discussions, State Rights were treated with little favor. Madison said, "The States are only political societies, and never possessed the rights of sovereignty." Gerry said, "The States have only corporate rights." Wilson, the philanthropic member from Pennsylvania, afterward a learned judge of the Supreme Court of the United States and author of the "Lectures on Law," said, "Will a regard to State Rights justify the sacrifice of the Rights of Men? If we proceed on any other foundation than the last, our building will neither be solid nor lasting." Such were the voices at that early heroic day. And now at the end of an unparalleled war to abase State Rights, we are asked to naturalize in the Constitution a new provision confirming to the States an odious pretension, shocking to the moral sense. But the character of this pretension belongs to another head.

4. Proceeding with the dissection of the proposition before the Senate I now exhibit it, not only as a concession to State Rights, which is admitted by a Louisiana supporter, but, should it be adopted, as the *constitutional recognition of an Oligarchy, Aristocracy, Caste and Monopoly, founded on color.* All this appears on the face; and as you examine the proposition, the intolerable consequence becomes still more apparent. Thus far we have been saved from such shame. The proposition now before us assumes that the elective franchise may be denied or abridged constitutionally on account of race or color, and thus sanctions the usurpation, thereby investing those who deny or abridge it with exclusive political control, without any regard to their number, though they may be a minority or even a small fraction of the people. What, sir, is this rancid pretension, if it be not an Oligarchy, Aristocracy, Caste, and Monopoly, founded on color, under the sanction of the Constitution? It is all these together, having beyond question the distinctive features of each and the distinctive discredit of each—therefore odious in government, odious in religion, odious in economy, and altogether constituting an outrageous indecency beyond anything in any constitution of which history makes record.

It is idle to say that this has been done already in the States. It may have been done *in fact.* But now you propose to give to this criminal fact the support of the Constitution and lift it into perpetual vigor. Who can depict the painful character of such a proposition, especially at this time, when the Republic is moved by every sentiment of justice, honor, gratitude, and self-respect, to beat down such a pretension as you would beat down Satan under your feet?

Already the country has been harassed and degraded for generations by the Slave Power, which was nothing but an Oligarchy, Aristocracy, Caste, and Monopoly; and now, when this Power has been overcome in battle it is proposed to inaugurate it anew, with a slight change of name, but with the same field of action and with the same malignant spirits to wield its energies. By your concession it tyrannized before; and now by your concession it will tyrannize again. The citizens whom it once trampled on as slaves it will continue to trample on as outcasts; and it will set up your permission embodied in the Constitution itself; God willing never by my vote.

5. Proceeding with the proposition before us, I denounce it as petrifying in the Constitution the wretched *pretension of a white man's Government.* At this moment, when we are striking the word "white" from the statutes of

the United States; when this word has disappeared even from the Post Office laws; when, by a vote of the House of Representatives, this word has been condemned in the laws regulating the elective franchise in the District of Columbia, it is proposed to insert its equivalent in the Constitution itself. To exhibit this shame is surely enough to cause you to turn away from it. Do not say that it is not proposed to insert it. What is the concession that the elective franchise may be denied or abridged "on account of race or color" but an insertion of the word "white" in the Constitution? In that text, as it still stands, from the beginning to the end, from the Preamble to the signature of George Washington, or the last word of the last Amendment, there is no recognition of "color." For the sake of decency, let us keep it so.

6. Proceeding still further with the pending proposition, I denounce it as assuming what is false in constitutional law, *that color can be a qualification for an elector.* The Constitution says that "the electors in each State shall have the *qualifications* requisite for electors of the most numerous branch of the State Legislature." Of course this leaves open the question what is meant by "qualifications." But this word must be interpreted in the light of the Constitution, which knows no "color," and again in the light of the Declaration of Independence, which knows no "color," and yet again in the light of common sense, which refuses to recognize "color" as a "qualification," in any just sense of this term. Consult the dictionaries of the day, and you will find it means "fitness," "ability," "accomplishment," "the state of being qualified;" but it does not mean "color." It is applicable to the conditions of age, residence, character, education, property, and the payment of taxes; but it cannot be applicable to "color." The English dictionaries most in vogue at the time of our fathers were those of Bailey and Johnson. Look at these. According to Bailey, who was the earliest, "qualification" is thus defined:

(1.) "*That which fits any person or thing for any particular purpose.*

(2.) "*A particular faculty, or endowment, or accomplishment.*"

According to Johnson, who is the highest authority, it is thus defined:

(1.) "*That which makes any person or thing fit.*"

Example.—"It is in the power of the prince to make piety and virtue become the fashion, if he would make them necessary *qualifications* for preferment."—*Swift.*

(2.) "*Accomplishment.*"

Example.—"Good *qualifications* of mind enable a magistrate to perform his duty, and tend to create public esteem of him."—*Atterbury.*

Thus, according to these definitions, "qualification" means "fitness" or "accomplishment," and according to the examples from classical writers, it means qualities like "piety" and "virtue," or like "faculties of mind." Obviously it cannot embrace color, which is a physical condition, insurmountable in its character. An insurmountable condition is not a *qualification* but a *disfranchisement.* As well say that the quality of the hair or the length of the foot should be a "qualification," as the color of the skin. The whole pretension is one of the false glosses fastened upon the Constitution by slavery, which must now be sloughed off. But the pending proposition adopts it and gives to it a pernicious life.

7. Again, I denounce the proposition as positively *tying the hands of Congress in its interpretation of a Republican Government,* so that under the guarantee clause it must recognize an Oligarchy, Aristocracy, Caste, and Monopoly, founded on color, with the tyranny of taxation without representation as republican in character, which I insist they are not. At present the hands of Congress are not tied. Congress is free to act generously, nobly, truly, according to the highest idea of a republic, discountenancing all inequality of rights and the tyranny of taxation without representation. Let the pending proposition find a place in the Constitution, and the guarantee clause will be restrained in its operation. The two clauses taken together, as they must be, will read substantially as follows: "The United States shall guaranty to every State in the Union a republican form of government; it being understood that the denial or abridgment of the elective franchise on account of race or color and the tyranny of taxation without representation are not inconsistent with a republican government." In other words, the denial or abridgment of the elective franchise on account of race or color, and the tyranny of taxation without representation will be recognized in the Constitution as republican in character. Of course all attempt to enforce this guarantee against an Oligarchy, Aristocracy, Caste, and Monopoly, founded on color, or against the tyranny of taxation without representation will be from this time impossible. The precious power which now exists will be lost forever.

8. Again, I denounce the proposition as *positively tying the hands of Congress in completing and consummating the abolition of slavery.* By the second clause of the recent constitutional amendment Congress is expressly empowered to "enforce" the abolition of slavery by "appropriate legislation." In pursuance of this power the Senate, by what is known as the Civil Rights Bill, has already undertaken to establish equality of civil rights in all the States and Territories, so that hereafter in our courts at least there shall be no discrimination on account of color. It was justly insisted that such "legislation" was needed to "enforce" the abolition of slavery, and on this account was

constitutional. The Senate acted accordingly. The bill has passed this body by more than a two-thirds vote. Obviously by the same title equality in political rights can be established also under this amendment if such equality shall be deemed important to "enforce" the abolition of slavery, or, in other words, to complete and consummate the good work. In the exercise of a granted power Congress is the sole judge of the "means" it shall employ; and this conclusion is sustained not only by reason but also by the Supreme Court of the United States in solemn judgments. You will remember the familiar precedents, which I insist are decisive. And now, in the face of these judgments, in the face of the reason of the case, and in the face of the authoritative precedent of the Senate establishing equality of civil rights, it is proposed to insert in the Constitution a provision despoiling Congress of its power under the constitutional amendment, so that hereafter that amendment, which should be interpreted generously and to advance liberty, will be changed so as to read, "Congress shall have power to enforce this article by appropriate legislation, it being understood that it shall not interfere for this purpose with any denial or abridgment of the elective franchise in any State on account of race or color." Thus again will a beneficent power be lost at a moment when all is needed for the safety and renown of the Republic.

9. Again, I denounce this proposition as *installing recent rebels to govern loyal citizens* under the sanction of the Constitution. The ruling class began and sustained the rebellion. The citizens whom you disfranchise were loyal, and some of them poured out their red blood for the Republic, and yet we are now asked to intrench this ruling class in the Constitution, so that they can wield unchecked power, while loyal millions are humbled at their feet. The bare statement of the case offends the reason and the conscience.

Pray, who may justly look to the Republic for protection? Is it the rebel or the loyalist? Is it the citizen who has caused all your woes, and now gnashes his teeth at your triumph, or is it the citizen who has watched your flag with sympathetic pride, and now rejoices in your triumph? Who can hesitate? And yet the proposition now before the Senate gives the palm of power and honor to the rebel class, and fixes this preëminence in the Constitution itself. It will not do to say, with Cain, "Am I my brother's keeper?" You are your brother's keeper; and you must see that he is saved from cruel oppression.

10. And lastly, I denounce this proposition as a *Compromise of Human Rights*, the most questionable of any in our history. Persons out of the Senate have sought to vindicate it, as other compromises have been vindicated in times past, by representing it as something which it is not. This is done by exhibiting one side only of the Compromise and then calling it "punitive" in character; as if in 1850 the admission of California, which was one side of the Compromise, had been exhibited only, while the unutterable atrocity of the Fugitive Slave Bill, which was the other side of the Compromise, had been concealed from view. The present Compromise, like all other compromises, has two sides; in other words, it is a concession for a consideration. On one side it is conceded that the States may, under the Constitution, exclude citizens counted by the million from the body-politic and practice the tyranny of taxation without representation, provided, on the other side, that there is a corresponding diminution of representative power in the lower House of Congress, without, however, touching the representative power in the Senate. Of course, the transcendent feature of this Compromise is the criminal concession, constituting, as it does, the sacrifice of brave defenders, and even of a whole race to whom we owe protection. The consideration is small. It will be forgotten when the gigantic concession will loom in history as a landmark of dishonor.

There have been other Compromises of Human Rights in times past. But considering the grandeur of the occasion; the promises of the Fathers; the extent of present obligations; the promptings of gratitude; the demands of public faith; the demands of public security, and the good name of the Republic, all of which are now involved, I am sure that no compromise so discreditable and disastrous was ever before proposed. A feeble prototype may be found in that intolerable Treaty known as the Assiento contract, from which every Englishman now turns with a blush, where at the end of an unprecedented war England bartered all that had been won by the victories of Marlborough for the privilege of supplying slaves to the Spanish colonies. The slave trade received a solemn sanction, and England pocketed the dishonest profits; just as now a kindred offense on a grander scale is to receive a solemn sanction, and we who sanction it are to pocket the profits in political power. Do not talk, sir, of this measure as "punitive" in character, unless you mean that it is punitive of our benefactors, for this is the only character it can bear in history. On a former occasion I entreated you not to copy the example of Pontius Pilate, who handed over the Saviour of the world, in whom he found no fault at all, to be scourged and crucified. It is my duty now to remind you that you go further than Pontius Pilate. He was a mocker and a jester; but he received nothing for what he did. You do. Not content with resolving the Senate into a Pretorium, you imitate Judas who betrayed the Saviour for thirty pieces of silver, and you imitate the soldiers who appropriated to themselves the rai-

ment of the Saviour. Do not answer me with a sneer. Has not the Saviour himself told us that what we do to the least we do to Him? Ay, sir, in offering fellow-citizens to be sacrificed, in betraying them for less than "thirty" Representatives in Congress, and in appropriating their political raiment, you do all this to the Saviour himself. Pardon the necessary plainness of my speech. I speak for my country, which I seek to save from dishonor; I speak for fellow-citizens whom I seek to save from outrage. And I speak for that public faith and public security in which is bound up the welfare of all.

SUMMARY OF OBJECTIONS.

Mr. President, such is the argument for the rejection of the pending proposition. Following it from the beginning you have seen, first, how this proposition carries into the Constitution itself the idea of Inequality of Rights, thus defiling that unspotted text; secondly, how it is an express sanction of the acknowledged tyranny of taxation without representation; thirdly, how it is a concession to State Rights at a moment when we are recovering from a terrible war waged against us in the name of State Rights; fourthly, how it is the constitutional recognition of an Oligarchy, Aristocracy, Caste, and Monopoly, founded on color; fifthly, how it petrifies in the Constitution the wretched pretension of a white man's Government; sixthly, how it assumes what is false in constitutional law, that color can be a "qualification" for an elector; seventhly, how it positively ties the hands of Congress in fixing the meaning of a republican government, so that under the guarantee clause it will be constrained to recognize an Oligarchy, Aristocracy, Caste, and Monopoly founded on color, together with the tyranny of taxation without representation, as not inconsistent with such a government; eighthly, how it positively ties the hands of Congress in completing and consummating the abolition of Slavery according to the second clause of the Constitutional Amendment, so that it cannot for this purpose interfere with the denial of the elective franchise on account of color; ninthly, how it installs recent rebels in permanent power over loyal citizens; and, tenthly, how it shows forth in unmistakable character as a Compromise of Human Rights, the most questionable of any in our history. All this you have seen, with pain and sorrow, I trust. Who that is moved to sympathy for his fellow-man can listen to the story without indignation? Who that has not lost the power of reason can fail to see the cruel wrong?

And now the question occurs, what shall be done? To this I answer, reject at once the pending proposition; show it no favor; give it no quarter. Let the country see that you are impatient of its presence. But there are other propositions in the form of substitutes. For any one of these I can vote. They may differ in efficiency; but there is nothing in them immoral or shameful. There is, *first*, the proposition to found representation on voters instead of population, and, *secondly*, the proposition to secure Equality in political rights by constitutional amendment or by act of Congress.

REPRESENTATION FOUNDED ON VOTERS.

The proposition to found representation on voters instead of population was originally introduced by me during the last Congress. Almost at the same time I introduced a series of resolutions declaring not only the power but the duty of the United States to guaranty republican governments in the rebel States on the basis of the Declaration of Independence, so that the new governments should be founded on the consent of the governed and the equality of all persons before the law. Thus, while proposing to found representation on voters I at the same time asserted the power of Congress under the Constitution to secure Equality in political rights. The proposition with regard to voters was much discussed during the recess of Congress. At the beginning of the present session it seemed to find favor. But at last statistics were adduced tending to show that it would transfer power from eastern States to western States in proportion to the excess of females over males in the former; and this abnormal circumstance was made an argument against it. Since then it has given place to the offensive proposition now before the Senate.

The proposition to found representation on voters instead of population may be seen, *first*, in what it does not do, and *secondly*, in what it does do.

Seeing it in what it does not do, all will confess that it does not carry into the Constitution itself the idea of Inequality of Rights, thus defiling that unspotted text; that it gives no sanction to the acknowledged tyranny of taxation without representation; that it makes no concession to State Rights, at a moment when we are recovering from a terrible war waged against us in the name of State Rights; that it does not recognize an Oligarchy, Aristocracy, Caste, and Monopoly, founded on color; that it does not petrify in the Constitution the wretched pretension of a white man's Government; that it does not assume what is false in constitutional law, that color can be a "qualification" for a voter; that it does not positively tie the hands of Congress in fixing the meaning of a Republican Government, so that under the guarantee clause it will be constrained to recognize an Oligarchy, Aristocracy, Caste, and Monopoly founded on color, together with the tyranny of taxation without representation, as not inconsistent with such a government; that it does not positively tie the hands of Congress in completing and consummating the abolition of Slavery according to the second clause of the constitutional amend-

ment; that it does not install recent rebels in permanent power over loyal citizens; that it does not show forth in unmistakable character as a Compromise of Human Rights, the most questionable of any in our history. All these things, so offensive to the conscience and the reason, this proposition does not do. In all these respects it is at least blameless.

On the other hand, without inflicting any stigma upon the Constitution or upon the Republic, without abandoning any principle, without making any concession to the States, without tying the hands of Congress, and without any Compromise of Human Rights, it does rearrange the basis of representation, so as to accomplish all that is proposed even by the most sanguine supporters of the other proposition, and it does this effectually without the opportunity for evasion which is afforded by the other proposition. The alleged inequality in its operation, owing to the excess of females over males in certain States, may make you hesitate to adopt it; but better take representation founded on voters even with any such alleged inequality, than do a grievous wrong. Better even wrong yourselves than wrong others.

Let me confess that I was tempted to this proposition by the conviction that I was carrying out the cherished idea of Massachusetts as embodied in her own constitution. According to a recent amendment the representation in both branches of the Legislature is founded on "legal voters," and not on population. Here are the words:

"A census of the *legal voters of each city and town*, on the 1st of May, shall be taken and returned into the office of the secretary of the Commonwealth."

"The enumeration aforesaid shall determine the apportionment of Representatives for the periods between the taking of the census."

"The House of Representatives shall consist of two hundred and forty members, which shall be apportioned by the Legislature, at its first session after the return of each enumeration as aforesaid, to the several counties of the Commonwealth, *equally, as nearly as may be, according to their relative numbers of legal voters*, as ascertained by the next preceding special enumeration."

"The Senate shall consist of forty members. The General Court shall, at its first session after each next preceding special enumeration, divide the Commonwealth into forty districts of adjacent territory, *each district to contain, as nearly as may be, an equal number of legal voters*, according to the enumeration aforesaid."

"Each district shall elect one Senator."

Obviously in adopting this rule Massachusetts has followed what seems to be a correct principle. Representative government is an invention of modern times. It was unknown in antiquity. Athens was a democracy where the people met in public assembly for the government of the State; but there was no representative body chosen by the people for this purpose. The public assembly was practicable in that age as the State was small, and the assembly at no time exceeded five thousand citizens—a large town meeting or mass meeting, we might call it, which Milton has termed "the fierce democracie." But where the territory was extensive and the population scattered and numerous, there could be no assembly of the whole body of citizens. To meet this precise difficulty the representative system was devised. By a machinery, so obvious that we are astonished it was not employed in the ancient commonwealths, the people, though scattered and numerous, are gathered, through their chosen representatives, into a small and deliberative assembly, where, without tumult or rashness, they may consider and determine all questions which concern them. In every representative body, properly constituted, the people are practically present.

If then the representative body is a substitute for the people themselves, meeting in primary assemblies, it would seem that it should be founded upon the people who compose the primary assemblies; in other words, upon the legal voters. Ordinarily there may be little difference between the proportion of legal voters and the proportion of population; but strictly the representative system is the agent of legal voters, and therefore the logic of the case is better satisfied if it be founded on legal voters rather than on population. With me this is no new idea. On another occasion in my own State, I asserted it. This was in a convention for revising the constitution of Massachusetts as long ago as 1853. Pardon me if I read a brief passage from a speech in that convention, not from any importance which I attach to it, but as showing how completely at that time this rule seemed to me just:

"A practical question here arises, whether this rule should be applied to the whole body of population, including women, children, and unnaturalized foreigners, or whether it should be applied to those only who exercise the electoral franchise; in other words, to voters. It is probable that the rule would generally produce nearly similar results in both cases, as the voters, except in a few places, would bear a uniform proportion to the whole population. But it will be easy to determine what the principle of the representative system requires. Since the object of the system is to provide a practical substitute for the meetings of the people, it should be founded in just proportion on the numbers of those who, according to our constitution, can take part in those meetings, that is, upon the qualified voters. The representative body should be a miniature or abridgment of the electoral body, in other words, of those allowed to participate in public affairs."—*Sumner, Recent Speeches*, p. 217. *Speech on the Representative System*, July 7, 1853.

In this view I found myself supported by two

illustrious names in our history. Mr. Jefferson, shortly after the victory at Yorktown had rescued Virginia from invasion and secured national Independence, prepared a draft of a constitution for his native State, which expressly provided that "the number of delegates which each county may send shall be *in proportion to the number of its qualified electors*, and the whole number of delegates for the State shall be *proportioned to the whole number of qualified electors in it.*" This proposition, which is substantially the Rule of Three applied to voters, was not adopted, but it still exists as a record of opinion. Sometime afterward, in the debates in the Convention which framed the Constitution, Mr. Madison gave his authority to the same conclusion, as follows:

"It has been very properly observed that representation was an expedient by which the meeting of the people themselves was rendered unnecessary, and *that representatives ought, therefore, to bear a proportion to the voters which their constituents, if convened, would respectively have.*"—*Madison, Debates*, vol. 2, p. 1103.

Thus, representation founded on voters seems to be commended by authority and principle. Its adoption now would at least give symmetry to our national system and make the representative more precisely the embodied presence of his constituents, while at the same time it would tend to enlarge the suffrage and to harmonize sectional pretensions with the national will when exerted for Human Rights. If representation were founded on voters the States would care little if Congress should annul all inequality in the elective franchise on account of color. The way would be open to Congress.

EQUALITY IN POLITICAL RIGHTS.

But there are other propositions which to my mind are more satisfactory, because they reach the special necessity of the hour, and provide the only effectual remedy. Speaking in the name of national justice and for the national safety, they cannot be put aside with indifference; nor is it wise to say that any measure of justice is not practical. I refer, of course, to the propositions, in different forms, to secure that Great Guarantee, *Equality in political rights*, by constitutional amendment, or by act of Congress, or by both.

A constitutional amendment which shall place Equality of political rights under the safeguard of a special text may be superfluous, but it is not unconstitutional or immoral. It will be supplementary to provisions already in the Constitution, and will be in the nature of a declaratory statute removing all doubts and cavils. It will be like an additional force in mechanics, or like a reënforcement in the field. It will be reduplication in a new form. On such an occasion, where such a cause is in issue, I welcome every alliance; and such I regard the proposition of the Senator from Missouri, [Mr. HENDERSON.]

PROPOSITION TO SECURE EQUALITY BY ACT OF CONGRESS.

The other proposition, which looks to the direct action of Congress under the existing Constitution and its amendments, is obviously the simplest and most practical, inasmuch as it deals with the exigency promptly, frankly, and according to the necessities of the hour. It does not undertake to act by indirection; nor does it postpone to an indefinite future what cannot be postponed without detriment to the Republic. Refusing to procrastinate it saves all. Such a proposition is commended by every argument of reason, humanity, and patriotism. To say that it is not constitutional is to say that the Constitution itself is not constitutional, for it is derived from the very heart of the Constitution and is filled with all its best life-blood.

Something has been said of the form in which the proposition has been presented. There is the bill of the Senator from Illinois, [Mr. YATES,] which he has maintained in a speech of singular originality and power, that has not been answered, and I do not hesitate to say cannot be answered. By this bill it is provided that all citizens in any State or Territory shall be protected in the full and equal enjoyment and exercise of their civil and political rights, including the right of suffrage. This is founded on the consideration that, by the abolition of slavery, the slave became at once a citizen, subject only to such disabilities as are common to other citizens, and that, by the second clause of the constitutional amendment, Congress is empowered to enforce the abolition of slavery by appropriate legislation. On this foundation the Senator places his bill, assuming that to complete the abolition of slavery, all restrictions, penalties, or deprivations of right, resulting from slavery in any State or Territory must be made to cease. The proposition that I have had the honor of presenting, is a joint resolution, which after declaring the duty of Congress to guaranty a republican form of government in States where the governments have lapsed, and also, the duty to complete the abolition of slavery by the removal of all relics of this wrong, proceeds to provide that there shall be no Oligarchy, Aristocracy, Caste, or Monopoly, nor any denial of rights civil or political on account of color or race, but all persons shall be equal before the law whether in the court-room or at the ballot-box. Not doubting the power of Congress to carry out this principle everywhere within the jurisdiction of the United States, I content myself for the present by asserting it only in the lapsed States lately in rebellion, where the two-fold duty to guaranty a republican government and to enforce the abolition of slavery is beyond question. To that extent I now urge it.

OBJECTIONS OF FORM.

Both these propositions are opposed as informal and inoperative, because they are without machinery or penalty. Such is the objection, if I understand it. As it has been made I answer it. Each proposition on its face is an act of Congress prohibiting the denial of certain rights on account of color. In this respect each is at least a congressional interpretation of the Constitution; and it is by no means clear that it could not be enforced in the courts. The bill, which has already passed the House of Representatives, striking out the word "white" in the electoral laws of the District of Columbia, is without machinery or penalty; but it is at least a congressional declaration, to be followed, of course, by other legislation with proper machinery and penalty; and this is the precise character of the propositions presented by the Senator from Illinois and by myself. Of course the objections to these propositions, if valid at all, must be equally valid against the bill for enfranchisement in the District of Columbia, and against every other congressional declaration without machinery or penalty. It is at most an objection of form, which I put aside and advance at once to the substance. The question is too vast and the times are too serious for a special demurrer. It must be tried on its merits. This question is as to the power of Congress to establish Equality of political rights at least in the rebel States. If Congress has this beneficent power, then exercise it in such form as shall seem best with machinery and penalty or without machinery and penalty; but, in God's name, exercise it, for the sake of the country which suffers from your delay.

THE POWERS OF CONGRESS.

Has Congress the power to secure Equality of political rights, at least in the rebel States? I do not at this time raise the question of its power throughout the United States, but in the rebel States. If this question were less transcendent in its relations, or if it could be approached calmly and without prejudice, in the light of reason, I cannot doubt the judgment you would give. But you must bring to its determination the same simple desire for truth undisturbed by external influences which would control a judicial tribunal; for, in the determination of your powers under the Constitution, you are a judicial tribunal. It will not be enough to deny the beneficent power or to mock at those who find it in the Constitution. You must answer their arguments.

1. I do not like to dwell on what has been so often discussed and so much misunderstood; and yet I must remind you of the power of Congress over the rebel States from the *necessity of the case*, because after the overthrow of legitimate governments, whose members were sworn to support the Constitution of the United States, there was no other rule possible for these States than that of Congress; precisely as the Territories according to Chief Justice Marshall, in a famous judgment, fell under "the power and jurisdiction of Congress" from the necessity of the case. I do not say that a State becomes a technical Territory, as that term is understood among us; but I do say, that in the lapse of the rebel States and in the absence of legitimate governments with members sworn to support the Constitution, these States fell under "the power and jurisdiction of Congress" until such time as they are reorganized according to the requirements of the Constitution. In the exercise of such a power and jurisdiction thus cast upon it, Congress must see that all loyal citizens without distinction of color take part in the formation of the new governments.

2. I do not like to dwell on another source of power, which is found in the *Rights of War;* but this too must be made plain. Nobody doubts that the United States were justified in asserting their supremacy in the rebel States by force of arms; but the war, when once begun, was subject to all the conditions of war, according to the Rights of War as found in the Law of Nations, doubly obligatory on us, first, because we belong to the Family of Nations, and secondly, because the Law of Nations is expressly recognized by the Constitution itself. Now, according to the Rights of War, as found in the Law of Nations, a conquering Power is justified in requiring not only Indemnity for the Past but Security for the Future. It depends upon the people of the United States, as represented in Congress, to determine the guarantees of this security. In support of this conclusion, I ask attention to a familiar authority, whose statement seems to cover the case. I read from Vattel:

"The whole right of the conqueror is derived from *justifiable self-defense.* He may in the first place do himself justice respecting the object which had given rise to the war, and indemnify himself for the expenses and damages he has sustained by it; he may, according to the exigency of the case, subject the nation to punishment by way of example; he may, even, if prudence so require, *render her incapable of doing mischief with the same ease in future.*"

The offending party when conquered may be rendered incapable of doing mischief with the same ease in future. This is according to natural justice. Then again the same familiar authority expresses himself as follows:

"If the inhabitants have been personally guilty of any crime against the conqueror, *he may by way of punishment deprive them of their rights and privileges.* This he may also do if the inhabitants have taken up arms against him and thus become his enemies. In that case he owes them no more than what is due from a humane and equitable conqueror to his vanquished foes."—*Vattel*, book iii, cap. 18, sec. 197.

Surely out of this ample power Congress

cannot hesitate in requiring Justice to the wards and allies of the Republic through whom the Rebellion was crushed; especially when without justice to them Security in the Future is nothing but a mockery and a phantasmagoria.

3. From these sources of power I pass to that other which is found in the *constitutional obligation to guaranty to every State of the Union a republican form of government.* Here is the text of the Constitution:

"The United States shall guaranty to every State in this Union a republican form of government."

This obligation is peremptory and not discretionary. It is *shall* and not *may*. The United States must do it. Of course, in executing this guarantee, you must affix a meaning to the term "republican form of government." To do this I have already in this debate endeavored to show the essential principles which our fathers had at heart when they founded the Republic. I shall not weary you now with the historic statement. It is enough if I present the conclusion. According to the fathers all men are equal in rights, and as corollaries from this truth all just government is founded on the consent of the governed, and taxation without representation is tyranny. Such was their idea of a Republican Government.

It is idle to allege against this definition, that there were property "qualifications" in most of the States by which the number of voters was essentially limited. This is true. But it must not be forgotten that a property "qualification," unless unreasonably large, is not a disfranchisement. It is a condition, sometimes onerous, but not in its nature insurmountable as is the condition of color, and it is equally applicable to all. And yet it is apparent from the recorded opinions of the fathers, that even this "qualification" was regarded as inconsistent with the genius of republican institutions.

It is idle also to allege against this definition, the toleration of slavery. This was sad enough; but the fathers who did it regarded slavery as absolutely exceptional. According to the definition of a slave, he has no will of his own, and can give no "consent" to government. Therefore he was not considered as belonging to the "body-politic." But as he was not represented he was not taxed, except as property. Indeed, a careful examination of his relations to the Government will show how completely in his case the rights of the "people" are left untouched. He was not regarded as one of the "people," and therefore was not under the safeguard of the rights of the "people." But all this was changed when he became a freeman. He was then one of the "people," whose property could not be taken by taxation without representation, and whose consent was essential to government. The difference was not between whites and blacks, but between slaves and freemen. All freemen without distinction of color were citizens. Listen, if you please, to the *Federalist*, in an article which has been attributed to each of the three eminent authors of that collection, and which the Senator from Maryland [Mr. JOHNSON] assumed was by Madison, but which is claimed for Hamilton, in the last edition of the *Federalist* by his son. Here are the important words:

"It is only under the pretext that the laws have transferred the negroes into subjects of property, that a place is disputed them in the computation of numbers; AND IT IS ADMITTED THAT IF THE LAWS WERE TO RESTORE THE RIGHTS WHICH HAVE BEEN TAKEN AWAY, THE NEGROES COULD NO LONGER BE REFUSED AN EQUAL SHARE OF REPRESENTATION WITH THE OTHER INHABITANTS."—*The Federalist*, No. 54, by Hamilton.

Such is the exposition of the actual Constitution by Hamilton. According to him, "If the laws were to restore the rights which have been taken away, *the negroes could no longer be refused an equal share of representation* with the other inhabitants." But this very hour has sounded. The laws have restored the rights which had been taken away, and it is now your duty to see that the people who have regained their rights are no longer refused an equal share of representation. The opinion of Hamilton on this vital question is still further attested by his saying that the liberty for which our fathers fought was the "right of each individual to a share in the Government;" that "the electors are to be the *great body of the people* of the United States;" and still further, by his proposition in his plan of a Constitution, as follows:

"Representatives shall be chosen, except in the first instance, by the *free male citizens and inhabitants* of the several States comprehended in the Union, all of whom of the age of twenty-one years and upward *shall be entitled to an equal vote.*"

In this proposition, which, though not adopted in terms, may be regarded as the pole-star of our Fathers, the distinguished author followed the Continental Congress which apportioned the war expenses among "the free citizens and inhabitants" without distinction of color.

Curiously enough we find confirmation of the true principle where you would little expect it, in that very Dred Scott case, which undertook to blast a race. Chief Justice Taney on that occasion laid down a rule which at this moment is applicable to every "citizen" without distinction of color. Here is his rule:

"The words, 'people of the United States' and 'citizens' are synonymous terms and mean the same thing. They both describe the political body, who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the sovereign people, *and*

every citizen is one of this people and a constituent member of this sovereignty."—19 *Howard Rep.*, 404.

This is strong enough; but the Chief Justice is still more precise:

"There is not, it is believed, to be found in the theories of writers on government or in any actual experiment heretofore tried an exposition of the term *citizen*, which has not been considered as conferring *the actual possession and enjoyment or the perfect right of acquisition and enjoyment of an entire equality of privileges, civil and political.*"—*Ibid*, p. 476.

Thus does that terrible judgment, which was like a ban to the colored race, now testify to their indisputable rights as "citizens."

Therefore I do not hesitate to say that when the slaves of our country became "citizens" they took their place in the "body-politic" as a component part of the "people," entitled to Equal Rights and under the protection of these two guardian principles, first, that all just government stands on the consent of the governed, and secondly, that taxation without representation is tyranny; and these rights it is the duty of Congress to guaranty as essential to the idea of a Republic. The aspiration of Abraham Lincoln, in his marvelous utterance at Gettysburg, was that "government of the people by the people and for the people should not perish from the earth." But who will venture to exclude millions of citizens from the "people?"

If the governments in the rebel States are brought to this touch-stone it will be found that they must fail. The departure from the true standard is not merely theoretical, as it might be regarded in States where the disfranchised are few in number, but there is an absolute failure to come within the conditions required. It is not decent to call a State republican where more than a majority of its "people," constituting the larger part of its "body-politic," is permanently disfranchised; nor is it decent to call a State republican where any considerable portion of its "people," constituting an essential part of its "body-politic," is permanently disfranchised. Even if in times past such a State could have been treated as republican, it will not do to treat it so now. It lacks the vital elements of a republican government, and must be treated accordingly. I do not dwell on this point, for it seems absurd to call it in question.

Clearly it is your duty to enforce the guarantee of a republican government. By the oaths you have taken to support the Constitution, you must take care that in all the States where governments have lapsed this guarantee shall be carried out. In the performance of this duty you may proceed either by an *enabling act*, establishing in advance the conditions on which these States shall be restored to their "practical relations with the Union," or by an act directly annulling all constitutions and laws of any such States inconsistent with a republican government. The power is in Congress. It has been recognized in formal terms by the Supreme Court; and you are the final judge of the "means" you shall employ. To say that you have not the power is to abdicate at a great exigency the very means of salvation. It is to fling away your arms in the very face of the enemy. It is to spike the Constitution at a moment when its full cannonade is needed for the overthrow of wrong. Clearly you have the power, and upon your heads will be the fearful responsibility if you fail to exercise it.

4. From this source of power in the Constitution I pass to another in the Constitution also, supplied by the *second clause of the constitutional amendment.* It is there provided that Congress shall "enforce" the abolition of slavery by "appropriate legislation." Under these words, according to all rules of interpretation and the judgments of the Supreme Court, Congress is empowered to do what in its discretion seems best to this end. It may adopt any "means" which shall seem "appropriate." It may select any weapon in the arsenal of power. I do not stop to cite the judgments of the court or to dwell on this power. The case is clear, and I challenge any contradiction. As the grant is recent it is not open to any suggestion of loss or waiver by desuetude or non-user. It is fresh as the abolition of slavery itself, and at this moment is just as vital. You may as well deny the one as the other.

Here, even at the cost of repetition, allow me to remind you that already during the present session the Senate, in pursuance of this power, has undertaken to pass a bill entitled "To *protect all persons in the United States in their civil rights* and furnish the means of their vindication." The declared object of the bill, in its very title, is the protection of all persons in the United States in their civil rights; and this object is carried out by the following provision:

"There shall be no discrimination in civil rights or immunities among the inhabitants of *any State or Territory of the United States* on account of race, color, or previous condition of slavery."

The bill proceeds to provide machinery and penalties for the enforcement of this prohibition. Mark, if you please, that this is not merely in the rebel States, nor even in the States where slavery was recently abolished, but everywhere throughout the United States. All this is done by virtue of that very clause of the constitutional amendment which I now adduce. It is done by Congress, in the exercise of its discretion, in order to "enforce" the abolition of slavery. It is the "means" which Congress adopts to this end. It is the weapon which Congress selects from the arsenal of power. But surely, if Congress, in order to "enforce" the abolition of slavery, can secure all persons through-

out the United States in their *civil rights*, it can, out of the same abundant source of power, secure all persons throughout the United States in their *political rights;* and this is precisely what is proposed by the bill of the Senator from Illinois. My own proposition, as I now present it, aims for the present at securing *political rights* throughout the rebel States; but the irresistible argument is the same in each case. Each is to "enforce" the abolition of slavery.

I do not stop now to exhibit the elective franchise as essential to the security of the freedman, without which he will be the prey of slavery in some new form, and without which he cannot rise to the stature of manhood. In opening this debate I have presented this argument fully. Suffice it to say in this place that Emancipation will fail in its beneficence if you do not assure to the former slave all the rights of the citizen. Until you do this your work will be only *half done*, and the freedman will be only *half a man.*

Such, sir, are the four sources of power in Congress, each of them ample: first, the necessity of the case, as with Territories, where there is no other jurisdiction; secondly, the Rights of War, under which all needful safeguards for the future may be required; thirdly, the duty to guaranty to every State in the Union a republican form of government; and fourthly, the authority to "enforce" the abolition of slavery by appropriate legislation. Out of each and all of these sources Congress may derive its power. It only remains that it should act as becomes the representatives of the American people.

URGENCY OF OUR DUTIES.

Mr. President, as I am about to close, allow me to remind you once more, that from the nature of the case and from the character of your obligations, the work of Emancipation must be completed by the National Government. It cannot be left to become the sport of sectional prejudice or wayward passion. It began with you and it is for you to give to it that final assurance which can be found only in Enfranchisement. It is for you "to maintain" the former slave in that liberty which he received at your hands. Such a duty cannot be renounced or delegated. It must be sacredly performed by the National Government according to its original pledge in the Proclamation of Emancipation and according to all the suggestions of reason. Humanity, too, joins in the cry. You cannot consent that the child Emancipation, born of your breath, shall be surrendered to the custody of enemies. Take it in your arms, I entreat you, and nurse it into strength. Be instructed by the examples of history, teaching that the masters of slaves cannot be trusted to legislate for them. This conclusion has been announced by the best English statesmen, one of whom thus gathers together the result. It is Brougham who speaks:

> "I entirely concur in the observations of Mr. Burke, repeated and more happily expressed by Mr. Canning, that the masters of slaves are not to be trusted with making laws upon slavery; that nothing they do is ever found effectual; and that if by some miracle they ever chance to enact a wholesome regulation, it is always found to want what Mr. Burke calls *the executory principle;* it fails to execute itself."—*Brougham's Speeches*, vol. 2, p. 219.

Such is the concurring voice of Edmund Burke, George Canning, and Henry Brougham. Thus, by testimony as well as by reason, in harmony with the national pledge, we are admonished that this work must be done by the Nation.

Do not say that you have not the power, when the will only is needed. It is the part of a good judge to amplify his jurisdiction. *Boni judicis est ampliare jurisdictionem.* Such is an approved maxim of the law handed down to us from early days. Kindred in character are other maxims which enjoin the duty of inclining always in favor of Liberty to the extent of catching at anything, even a twine thread, by which to save it. But on this occasion the good Congress need not amplify its jurisdiction. Enough if it enforces what plainly exists. It need not catch at any twine thread to save Liberty. The great cables of the Constitution with mighty anchors are at command.

Sir, the freedman must be protected, and not sacrificed. You can do it, but only in one way. Paper will not do it. Parchment will not do it. Compromise will not do it. Give to him the strength which comes from the fullness of citizenship and he will then be protected. Do not hesitate. Follow principles. They are like those divine promises which, when properly understood and applied, will answer every case of difficulty or distress, and as in the Pilgrim's Progress, "will open any lock in Doubting Castle." Have faith. Difficulties disappear before the earnest man. To the boatman who said it was impossible to brave the storm that was raging, William Tell, full of patriotic purpose, cried out, "I know not whether it be possible, but I know that it must be attempted;" and the deliverer reached his destination. The same courage is needed now. The attempt at least must be made. And who can say that it will fail? On its side will be Providence, the prayers of good men, nature in her manifold attributes, and the awakened judgment of the civilized world. The time has passed when the Spirit of Caste can continue to bear sway. See to it, Senators, that this Spirit has no foothold in the Constitution of our country. To this duty I summon you now by every obligation of statesmanship, for the sake of the Republic and for your own sakes. To the spirit of Caste answer back in the spirit of that Christian truth which you have been taught. Recall

the precious words of the early English writer, who, describing "the good sea-captain," tells us that he "counts the image of God nevertheless his image cut in ebony as if done in ivory." The good statesman must be like the good sea-captain. His ship is the State which he keeps safe on its track. He, too, must see the image of God in all his fellow-men, and, in the discharge of his responsible duties, must set his face forever against any recognition of Inequality in Human Rights. Other things you may do; but this you must not do.

FRIDAY, MARCH 9, 1866.

The same subject being again under consideration,

Mr. SUMNER said: There is a familiar story of a shield with inscriptions on it which was suspended in a highway. Two travelers approached it from opposite quarters, and standing face to face, each read the inscription as he saw it. Straightway there was a difference and a contest. Each insisted that the inscription was as he read it. At last on looking at both sides it was ascertained that each was right, as the inscriptions on the two sides were different. So it is on the present occasion. The measure now before the Senate has two sides. The Senator from Maine, as he approaches it, sees only the side which limits the representation. As I approach it I see the recognition of a caste and the disfranchisement of a race. He defends it; I condemn it. But he defends only what he sees. I condemn only what I see. It is the misfortune of the measure that it has two sides with two opposite inscriptions. This is especially unhappy at this moment when we are bound to be frank and loyal, and to do nothing which may be interpreted in a double sense. Above all should this be the case with regard to an amendment of the Constitution. But the present proposition does not fall within these conditions. It is enough that there are at this moment two opposite opinions with regard to its meaning.

Now, sir, it will not be denied that there are opposite opinions on the meaning of this proposition. The Senator from Maine affixes to it one meaning. I affix to it another. The Senator sees nothing bad in it. I see in it nothing good; or, rather, all that it proposes to do is absorbed, merged, and lost in its evil. Against this proposition I am in earnest, and I speak so. For those from whom I differ I have nothing but personal kindness; but I must condemn the text which they seek to insert in the Constitution. What is debate? It is the expression of opinions, conclusions, and convictions on matters before the Senate. These must be expressed fully, freely, and according to the conscience of the speaker. If a measure is deemed to be bad, injurious, pernicious, founded in wrong principles, and calculated to produce infinite mischief, all this must be said; and it must be said with plainness according to the nature of the exigency. To this end language is given. The measure must be exposed. There are no terms to be spared which may be needed in this exposition, whether to reach the judgment or the feelings. Of course, on this occasion I see only the subject. The Senator reminds you of the friends whose votes I arraign—cherished colleagues in both Houses, valued associates in political opinion, and two thirds of the House of Representatives. All this increases my sorrow. It gives me a pang; but it cannot make me change convictions which come from the very depths of conscience.

But I am not alone in my interpretation of this proposition. Only the other day I presented the petition of the editor of the Boston Recorder, in which he was moved to protest against it as "disgraceful," inasmuch as it disfranchised a race and offended against the Declaration of Independence. I have here papers and testimonies showing how extensively this proposition is so interpreted. Here, for instance, is a communication from an honored citizen of New York, once a member of the other House, one of the Old Guard of Abolitionists, who from the first gun at Fort Sumter has seen our duties with a sensitive conscience and a patriotic soul; I mean Mr. Gerritt Smith. Mark, if you please, that I cite his words simply as showing how an ingenuous nature is touched by this proposition:

"I see that the House of Representatives approves, and by a very strong vote, the proposed apportionment amendment of the Constitution. I see, too, that nearly all the members, who are the most radical friends of freedom, are included in this vote; and that there is, therefore, no room in the case for questioning motives. Freedom may, however, be wounded unwittingly. Nay, she may be wounded even in the house of her friends. Such is her fate in the present instance. And no less deep and dangerous is the wound, but, on the contrary, all the deeper and more dangerous, because inflicted by hands which aimed not to harm but to help her. Moreover, though it is always consoling to be able to trace an error to the understanding, the error may, nevertheless, be quite as pernicious as if the heart were involved in it."

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"A disgraceful, if not indeed fatal, blot upon the Constitution and country will be this one. Disgraceful is it to a Government to license the gambling-house, even though it be on the condition of being paid for the license. Disgraceful to it to license the brothel or the dram-shop, even though on such condition. But how emphatically disgraceful for a Government to license slavery, that crime of crimes, even though the consideration in return for the license be very great and the pay very tempting. This, however, is the deep disgrace with which the apportionment amendment threatens the Constitution and the country." * * * * "It is true that slavery is not literally in the amendment. It is true, too, that proscription from the ballot-box does not always mean slavery. But it is

also true that, where such proscription is of one race by another, there is an instance where the proscribed are enslaved. The power, therefore, which this amendment will give the southern whites to withhold the ballot from the southern blacks will be their power to enslave them. If they shall withhold from them the ballot, they will also withhold from them freedom."

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"It goes to hinder the identification of the South with the nation. Another, and by far the gravest of all objections, is that they whom it leaves unrepresented, are deeply wronged and cruelly insulted by such an ignoring of their manhood. What a mean as well as great crime against the scores of thousands of black men who took up arms to save the nation, and without whom it would not have been saved, is this shutting of them out from representation. Is the reply that they would gain nothing by being represented so long as they have not the ballot? Most unsatisfactory reply! For who but the nation is responsible for their not having it? Who but the conqueror shall decide what is due to the brave men who so essentially helped to make him conqueror? Surely, it is not for their and his enemies to decide it."

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"Unrepresented though the southern negro will be, he will not be left untaxed, and this they understand full well who favor the amendment which permits this oppression. Our revolutionary fathers felt that taxation without representation was just cause for war. But in this amendment their degenerate sons open wide the door for the perpetration of this flagrant injustice." * * * * * * * *

"How idle the hope, so often expressed, that the tendency of things at the South will be such as, after a very few years, to give her blacks access to the ballot-box. Just the reverse will be this tendency. The indisposition to do them justice will be constantly increased by the exercise of absolute power over them. This amendment adopted, and they will never get suffrage, until a bloody revolution shall bring it to them." * * * * * * * * * *

"The nation still uncured, even by the very horrid war from which she has just emerged, of her pride of race on the one hand and her contempt and hatred of race on the other, must, I strongly fear, continue to drift on toward another and even still more horrid war—a war of races." * * * * "That the Republican party was demoralized by this great mistake of the President is but too clearly indicated by this disastrous vote of the House of Representatives on the apportionment amendment. Had the President entered upon his high office with the conviction burning in his soul, that 'a man's a man,' however conditioned or colored, no such amendment, nor anything in its place short of the instant demand for negro suffrage would have been so much as thought of." * * * * "I do not forget that the amendment in question is claimed to be a protest against the caste spirit. Sufficient, however, for its utter condemnation is the fact that instead of prohibiting it permits the indulgence of this accursed spirit." * * * * * * * *

"I have spoken of the crushing effect of this amendment on the negro. Well-nigh as crushing will it be on the white Unionist at the South. His protection, as well as the negro's, until the great battle-day comes, could be only in the negro's ballot. Hence he will retreat to the North unless he shall elect to stay and fight by the negro's side." * * * * *

"I notice that a common excuse among the friends of freedom for favoring this apportionment amendment is that we can get nothing better. I know not how that may be. But I do know that we can get nothing much worse; and that it would be far better to get nothing than to get this."

I have also presented to the Senate the petition of George R. Downing, Frederick Douglass, and others, representing the colored race in Washington, in which they give their opinion of this proposition. They protest against its adoption as operating disfranchisement on account of race or color. They pray Congress—

"To favor no amendment of the Constitution of the United States which will grant or allow any one or all of the States of this Union to disfranchise any class of citizens on the ground of race or color."

They then proceed to say that—

"In the Constitution, as it now stands, there is not a sentence nor syllable conveying any shadow of right or authority by which any State may make color or race a disqualification for the exercise of the right of suffrage; and the undersigned will regard as a real calamity the introduction of any words, expressly or by implication, giving any State or States such power; and we respectfully submit that if the amendment now pending shall be adopted it will enable any State to deprive any class of citizens of the elective franchise."

Such is the testimony of these very intelligent representatives of colored persons. They speak with a peculiar authority from the interest which they necessarily have in the question. They speak for the freedmen.

Mr. President, I do not wish to argue the main question again. I have said enough. The Senator has reminded you several times how much. I am sorry to have trespassed so often and so long. I will not trespass now. Of course there is a radical difference between the Senator and myself. We see opposite things when we look at this proposition. And permit me to say we see opposite things when we look at the Constitution itself. I cannot accept his interpretation. I do not believe that under the Constitution even as it exists the disfranchisement of a considerable portion of fellow-citizens is consistent with a republican government. Still further, I do not believe that "color" can be a "qualification" for an elector. He does. And here is a point of divergence which carries us far apart. He consents willingly to this fatal text. With my convictions I cannot.

I have listened to all that has been said. But the proposition is to me as obnoxious as ever.

I cannot see it otherwise. Feeling that Caste and Disfranchisement on account of color are utterly irreligious, flagitious, and unrepublican, you must pardon me if I exert myself to prevent their introduction in the Constitution of my country, especially at a moment when we are under such obligations of gratitude to these outcasts, and when injustice to them is so full of peril to the Republic. I have spoken strongly; you will pardon it to the ardor of my nature and to the strength of my convictions. I have fought a long battle with slavery, and I confess my solicitude when I see anything that looks like concession to it. It is not enough to show me that a measure is expedient; you must show me also that it is right. Ah! sir, can anything be expedient which is not right? From the beginning of our history the country has been afflicted with compromise. It is by compromise that Human Rights have been abandoned. I insist that this shall cease. The country needs repose after all its trials; it deserves repose. And repose can only be found in everlasting principles. It cannot be found by inserting in your Constitution the disfranchisement of a race.

This proposition can be fully appreciated in its "bad eminence" only when it is considered as the offering of Congress at this time for the protection of those to whom we are under obligations of gratitude. This is our panacea, our Balm of Gilead for them. This is what we are asked to do. And the Senate has been warned not to give the protection found in the elective franchise either by constitutional amendment or by act of Congress; that such a constitutional amendment would not be adopted by the people, and, therefore, we ought not to present it; and that Congress has not the power to destroy inequality in political rights. Sir, I do not despair of the Republic; I will not; I cannot. But if ever I were disposed to despair it would be when listening to such arguments and excuses. The people are in advance of us and will sustain us if we are courageous. They will adopt any constitutional amendment that ought to be adopted. They will adopt anything that is true, just, and noble for the protection of benefactors and to carry out the principles of our Government. They will sustain any legislation having the same object. This is what they expect. It is what the freedmen expect. It is what the Unionists of the South expect. They do not wish to be surrendered to the tender mercies of the rebels. They ask Congress to protect them. And they see that this can be done only by giving the ballot to the freedmen. I have in my hand a letter from a Unionist of Alabama addressed to another and received only yesterday, dated February 25, and written in the very heart of Alabama, who thus speaks of this very question:

"All men of common sense must now see that there can now be no loyal civil governments in these States if the negroes are not permitted to neutralize with their votes the votes of rebels. On this account I do hope the joint resolution recently introduced in the Senate by Mr. SUMNER will prevail. Whatever may have been our former notions in regard to the negro, it is now very evident that practically they are better citizens than the majority of whites in some portion of the rebel States. The Declaration of Independence is the true and just basis upon which these State governments must be founded."

Such is the voice of a Unionist of Alabama. He looks to Congress. God forbid that Congress should abdicate its beneficent powers. They are all needed for the safety and welfare of the Republic. I cannot, I dare not help in any such abdication.